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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

FIRST NAT BANK OF LOUISA v. ANDERSON.

June 12, 1919.

[99 S. E. 561.]

Bills and Notes (§ 422 (1)*)—Notice of Protest—Waiver.—Director, who indorsed note of company, held, by his conduct in admitting liability and authorizing and suggesting a plan of settlement, to have waived notice of protest, under Code 1904, § 2841a, subsec. 109.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 459.]

Error to Law and Equity Court of City of Richmond.

Action by the First National Bank of Louisa against John T. Anderson and others. From judgment for defendant named, plaintiff brings error. Reversed.

W. Worth Smith, Jr., of Louisa, and *T. J. Moore* and *M. J. Fulton*, both of Richmond, for plaintiff in error.

H. W. Goodwyn, of Richmond, for defendant in error.

KARNES v. COMMONWEALTH.

June 18, 1919.

[99 S. E. 562.]

1. **Jury (§ 117*)—Objection to Panel—Time—"Impaneled."**—Under Code 1904, § 4018, defendant's objection that the jury was illegally constituted and selected, not being made until after the jury was "impaneled," that is selected, found free from exceptions, and duly sworn, was properly overruled; it not appearing that the irregularity was intentional, or such as probably to cause injustice.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Impanel. For other cases, see 9 Va.-W. Va. Enc. Dig. 47.]

2. **Criminal Law (§§ 1035 (6), 1144 (8)*)—Jury (§ 58*)—Objections—Presumption.**—While the statutes with reference to the sum-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

moning and impaneling of jurors in criminal cases are mandatory and must be strictly followed, yet the appellate court will indulge every proper presumption in favor of the regularity of the proceedings, and will not reverse the case where no injury is shown, unless the objection was made before the jury is sworn.

[Ed. Note.—For other cases, see 14 Va.-W. Va. Enc. Dig. 625.]

3. Jury (§ 33 (3)*)—Jury of "Vicinage"—Statute.—Code 1904, § 3053, giving the corporation courts concurrent jurisdiction with the circuit courts over criminal offenses committed within a mile of a city, is not unconstitutional as violative of the right of a prisoner, under Const. art. 1, § 8, to have a jury of his "vicinage," which as used means the territorial jurisdiction of the court in which the venue of the crime is laid.

[Ed. Note.—For other definitions, see Words and Phrases, Second Series, Jury of the Vicinage.]

4. Criminal Law (§ 366 (5)*)—Evidence—Declarations of Deceased.—In a prosecution for the murder of a married woman with whom defendant had been maintaining illicit relations, statements of the woman before the killing that she was in fear of another man, also her paramour, other than defendant or her husband, and that he had threatened her, held admissible.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 469.] 511.]

5. Homicide § 286 (2*)—Instructions—Possession of Weapon by Defendant.—In a prosecution for murder, the giving of an instruction that when a mortal wound is given, with a deadly weapon in the previous possession of the slayer, without provocation, it is prima facie a willful, deliberate, and premeditated killing, held error, in the absence of evidence that defendant ever had a pistol or other deadly weapon.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 469.]

6. Homicide (§ 234 (2)*)—Presence at Crime.—The mere presence of defendant with deceased at the time of the murder charged was not sufficient to justify his conviction.

7. Homicide (§ 288*)—Instruction—Presence of Defendant at Killing.—In a prosecution for murder of another man's wife, defendant's paramour, in view of the evidence that defendant was with the woman when she was killed, he was entitled to have an instruction that his mere presence at the time was not alone sufficient to justify his conviction.

8. Criminal Law (§ 829 (1)*)—Instructions—Repetition.—The trial court properly refused requested instructions which were repetitions in substance of instructions already given.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

9. Homicide (§ 254*)—Murder in Second Degree—Sufficiency of Evidence.—Evidence held insufficient to sustain conviction of defendant for murder in the second degree of another man's wife, his paramour, with whom he was friendly while he had neither motive nor provocation to commit the crime.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 820.]

Error to Corporation Court of Roanoke.

A. H. Karnes was convicted of murdered in the second degree, and brings error. Reversed, and case remanded for new trial if the Commonwealth shall be so advised.

Hoge & Darnall, of Roanoke, and *Hairston & Hopkins*, for plaintiff in error.

John R. Saunders, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *Morton L. Wallerstein*, of Richmond, for the Commonwealth.

SOUTHERN MFG. & SUPPLY CO. v. KLAVAN.

June 12, 1919.

[99 S. E. 566.]

Sales (§ 479 (15)*)—Failure to Pay Installments—Remedy.—Under contract reserving title in seller and providing that in event of default in payment of any installment all deferred payments should become due and payable at seller's election, the seller in case of default could exercise his election to proceed by motion for recovery of the debt; the remedy afforded by Code 1904, § 2462, not being exclusive.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 71.]

Error to Corporation Court of Hopewell.

Proceedings by the Southern Manufacturing & Supply Company against one Klavan. Judgment for plaintiff was set aside, and new trial granted, and upon the second trial there was judgment for defendant, and plaintiff brings error. Reversed, and judgment entered for plaintiff.

W. L. Devany, Jr., of Hopewell, for plaintiff in error.

A. L. Jones, of Monterey, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.